

From: [Stephen Tzhone](#)
To: [Barbara Nann](#)
Cc: [Brenda Cook](#); [Carlos Sanchez](#); [Charles Faultry](#); [Curry Jones](#); [Peycke.Mark@epa.gov](#); [Robert Werner](#)
Subject: Re: San Jacinto: comments on Draft AOC
Date: 06/16/2009 07:32 PM

Barbara,

1) You and I both have the same job in the sense that we both are charged with ensuring EPA's goal of protecting human health and the environment is achieved.

Now, the AOC is a document that you are charged with completing. Just like the SOW for me and the SNL for Bob. I am doing just that for the SOW and on all accounts, Bob seems to be doing that for the SNL (ie- coordinating with relevant parties with the specific expertise on items you need assistance, and then actually integrating them into the document).

For the AOC, I am assuming that if you want to draw certain conclusions of law and determinations from findings of fact, then you have to make a legal call on the facts... which means you have to understand the facts... and draw from it whichever findings are relevant.

I am going to go on a stretch here and assume that you and I both do not have the specific expertise on a variety of facts. For me, that is why I have to engage in the collaboration of various experts to produce a RI sampling plan, or a SOW, or whatever. I am sure you can do the same on the AOC.

If you need assistance, contact the people with the specific expertise, just like I am doing to complete the SOW and Bob is doing to complete the SNL.

2) Now, above being said, this is getting silly for two people that should be working together. Since this is for the AOC, I propose that you coordinate a meeting that assembles Brenda and Curry to come and explain to both of us and whomever else what facts have been determined from both the HRS and TMDL. Then, you, me, and whomever else can decide collectively which facts are relevant for whatever conclusions of law and put them in the AOC.

Stephen L. Tzhone
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▼ [Re: San Jacinto: comments on Draft AOC](#)

Re: San Jacinto: comments on Draft AOC 

Barbara to: Stephen Tzhone
Nann

06/16/2009
02:18 PM



9344608

Cc: Brenda Cook, Carlos Sanchez, Charles Faultry, Curry Jones, Robert Werner, Peycke.Mark

Stephen,

EPA is my client, not Stephen Tzhone. My job is to ensure that EPA's goal of protecting human health and the environment is achieved. The Findings of Fact relating to the technical information is not a Brenda Cook or a Curry Jones job. These are things that you should know, you should provide for the AOC, and be prepared to discuss with the PRPs when we meet with them to negotiate the PRPs to conduct the RI/FS. This is not a job that you delegate to others, but one that you need to be fully versed in since this is the site that you have been assigned and you are in charge of managing the site. That being said, I need you to review the HRS package and glean the following pertinent information for the AOC (keep in mind that you will need to be prepared to speak on this fairly comfortable when EPA meets with the PRPs to negotiate a PRP-lead RI/FS.):

1. Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations and quantities where known;
2. Description of actual and/or potential release (i.e. leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive;
3. Identification of the populations at risk; both human and non-human;
4. Health/environmental effects of some major contaminants;

If you need assistance, you can contact Gary Miller.

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▼ [Re: San Jacinto: comments on Draft AOC](#)

Re: San Jacinto: comments on Draft AOC 

Stephen Tzhone to: Barbara Nann, Brenda Cook, Curry Jones

06/16/2009
12:10 PM

Cc: Carlos Sanchez, Charles Faultry, Robert Werner

Hi Barbara,

I think we got the relationship on the site confused... I'm the client, you are the attorney. You need to coordinate the AOC completion (just like I am coordinating the SOW completion and Bob on the SNL completion).

- 1) The best and most appropriate personnel for paragraph #9 is Brenda Cook. Please coordinate with her to include or complete AOC paragraph #9.
- 2) The best and most appropriate personnel for paragraph #10 is Curry Jones. Please coordinate with him to include or complete AOC paragraph #10.
- 3) Brenda/Curry: Attached is the draft AOC for San Jacinto. Barbara needs some assistance regarding AOC paragraph #9 and #10 (please see her comments below).

Please do not modify paragraphs #6-8 (that is directly from the site SOW and is the information that I am comfortable with for the AOC findings of fact). However, Barbara is making a legal determination to go beyond that for her findings of fact. Thus, please assist her so that we can get this document completed, thanks.

[attachment "AOC RIFS Draft 1.doc" deleted by Barbara Nann/R6/USEPA/US]

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▼ Re: San Jacinto: comments on Draft AOC

Re: San Jacinto: comments on Draft AOC 

Barbara Nann to: Stephen Tzhone

06/16/2009
09:22 AM

Cc: Carlos Sanchez

Stephen,

Referring to the HRS package in the AOC is not adequate. I need the technical details of why the site ranked spelled out in the findings of fact. The AOC is the master document for the site and should not send the reader to another document or website for EPA's authority to draft the AOC. Note: the legal portions of the findings of fact are in there already (paragraphs 13-18).

Looking at what you did, this is what needs to be changed/expanded:

(1) Paragraph 9: needs to be expanded. Do not refer to the HRS package. List the technical details as to why the site ranked on the NPL. This may take several paragraphs (list out contaminants found out at the site and the levels found. NOTE: don't put in TMDL info unless it is in the HRS package.)

(2) Remove Paragraph 10 referencing TMDL unless paragraph is tweaked. Paragraph just states that San Jacinto River is contaminated with dioxin but there is no facts/information in the AOC that ties those TMDL numbers to the site. (This makes it irrelevant bc AOC is about site conditions and the threatened or actual release of hazardous substances at the site.)

Please take another stab at Paragraph 9.

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▼ Re: San Jacinto: comments on Draft AOC

Re: San Jacinto: comments on Draft AOC 

Stephen to: Barbara Nann
Tzhone

06/15/2009
04:47 PM

Cc: Carlos Sanchez

Barbara,

1) The AOC 'findings of fact' is both a technical and legal call. My technical description of the site (draft SOW paragraphs 15-18), which is my summarized 'findings of fact' is already given to you. I'm comfortable with that (that's why I have it in the SOW) and if you are comfortable with that, then either you or I can insert it verbatim into the AOC.

2) If you are not legally comfortable with the 'findings of fact' limited to just my technical description of the site, then I recommend making a reference to the whole HRS and/or TMDL report. Perhaps something like this:

'According to Hazard Ranking System (HRS) Documentation Record associated with the finalization of the Site on the National Priorities List, an observed release to the HRS Surface Water Migration Pathway has been established. Please refer to the HRS Documentation Record for additional information; especially, HRS Documentation Record Chapters 2.2 Source Characterization, and 2.3 Likelihood of Release.'

and/or,

'According to the Houston Ship Channel TMDL Project for Dioxin, elevated levels of dioxin have been observed in the San Jacinto River Watershed, including the area in and around the Site. Please refer to the Houston Ship Channel TMDL Project for Dioxin website for additional information; especially, annual summaries of project findings and progress, at:

<http://www.tceq.state.tx.us/implementation/water/tmdl/26-hscdioxin.html>'

Technically, I did not list either one because neither 'finding' qualifies for quantification of absolute risk from the site, even though it may be implied as such. However, while I did not include them specifically, you may want to legally call them out as a 'finding of fact' for the AOC. So I'm giving you that option. If you don't want to, that's fine... remember, I am already okay with what I gave you to insert into the AOC 'findings of fact'.

3) Here, to save time, I have attached for you the AOC with edits which include all of the above. I'm okay with whatever you want to do with these edits, provided that the language associated with the technical description from the draft SOW is kept intact:

[attachment "AOC RIFS Draft 1.doc" deleted by Barbara Nann/R6/USEPA/US]

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